

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

KIM MARIE FELLERS,

Petitioner,

v.

Case No. 06-C-738

STATE OF WISCONSIN,

Respondents.

**ORDER ON PETITIONER'S MOTION TO PROCEED
IN FORMA PAUPERIS**

On July 6, 2006, Kim Marie Fellers ("Fellers"), a prisoner incarcerated pursuant to a state court judgment, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 and requested that she be able to proceed in forma pauperis ("IFP").

The court must first evaluate Fellers' request to proceed IFP. The filing fee for habeas corpus cases is only \$5.00. In her application to proceed IFP, Fellers states that she has a monthly income of \$8.00 and \$15.00 in a cash, savings, checking, or similar account. However, a review of her prison trust account statement for the month of June 2006 that Fellers provided reveals a beginning balance of \$123.69 and an ending balance of \$161.87. Clearly, Fellers has the resources to pay the \$5.00 filing fee. Therefore, her request to proceed in forma pauperis will be denied. Fellers is ordered to pay the \$5.00 filing fee within 30 days of this order. Failure to pay this filing fee shall result in the case being dismissed.

Upon the payment of the \$5.00 filing fee, this court shall screen the petition pursuant to Rule 4 of the Rules Governing Section 2254 Cases. Under Rule 4, this court must make a preliminary

examination of the petition. If the court finds that “it plainly appears from the face of the petition and any exhibits annexed to it that the petitioner is not entitled to relief in district court, the judge shall make an order for its summary dismissal.” Rule 4, Rules Governing Section 2254 Cases.

As a part of this Rule 4 screening, the court shall dismiss a petition if it is plainly apparent that petitioner has not exhausted state remedies. When a petitioner has failed to pursue any form of a direct appeal pursuant to Wisconsin State Statute section 947.02 or a collateral attack pursuant to section 974.06, a petition will ordinarily be dismissed pursuant to Rule 4. Additionally, a petition may be dismissed pursuant to Rule 4 if it is plainly apparent that the petitioner fails to identify how her incarceration is a product of a state court action that was arguably “contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court,” 28 U.S.C. § 2254(d)(1), or “a decision that was based on an unreasonable determination of the facts” 28 U.S.C. § 2254(d)(2).

IT IS THEREFORE ORDERED that the petitioner’s request to proceed in forma pauperis is **DENIED**. The petitioner is ordered to pay the \$5.00 filing fee within **30 days** of this order. Failure to pay this fee shall result in a dismissal of the petition.

Dated at Milwaukee, Wisconsin, this 11th day of July, 2006.

s/AARON E. GOODSTEIN
United States Magistrate Judge